

110TH CONGRESS
2D SESSION

H. R. 6457

To amend titles II and XVI of the Social Security Act to provide for equitable treatment of disability beneficiaries with waxing and waning medical conditions by establishing, through the implementation of a sliding scale of benefits based on income, a system under which higher incomes result in lower benefits and lower incomes result in higher benefits, and work is incentivized by allowing greater total monthly income when working than could be provided by work or benefits alone.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2008

Mr. FILNER introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To amend titles II and XVI of the Social Security Act to provide for equitable treatment of disability beneficiaries with waxing and waning medical conditions by establishing, through the implementation of a sliding scale of benefits based on income, a system under which higher incomes result in lower benefits and lower incomes result in higher benefits, and work is incentivized by allowing greater total monthly income when working than could be provided by work or benefits alone.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Encourage Initiative
3 and Promote Self-Esteem Act of 2008”.

4 **SEC. 2. AMENDMENTS TO TITLE II OF THE SOCIAL SECU-**
5 **RITY ACT.**

6 (a) IN GENERAL.—Section 222 of the Social Security
7 Act (42 U.S.C. 422) is amended by adding at the end the
8 following new subsection:

9 “Special Rules for Benefits Based on Waxing and
10 Waning Medical Condition

11 “(f)(1) In the case of any qualifying disabled indi-
12 vidual—

13 “(A) the termination month for purposes of sec-
14 tion 223(a)(1) or subsection (d)(1)(G), (e)(1), or
15 (f)(1) of section 202 shall be, in lieu of the termi-
16 nation month otherwise described therein, the third
17 month following the end of the individual’s special
18 entitlement period,

19 “(B) the extent to which benefits of the indi-
20 vidual under section 223 or subsection (d), (e), or
21 (f) of section 202 are payable for any month during
22 the individual’s special entitlement period shall be
23 determined without regard to whether the individual
24 engages in substantial gainful activity,

25 “(C) the amount of the individual’s monthly in-
26 surance benefit payable for any month during the

1 special entitlement period shall not exceed the max-
2 imum benefit payment for the month determined
3 under paragraph (4), and

4 “(D) the Commissioner shall not undertake a
5 review of such individual’s disability during any
6 month following a month in which such individual
7 performs services from which such individual earns
8 the greater of \$350 or the dollar amount derived for
9 the month for purposes of this subparagraph under
10 paragraph (6).

11 “(2) For purposes of paragraph (1), the term ‘quali-
12 fying disabled individual’ means an individual—

13 “(A) who is entitled to disability insurance ben-
14 efits under section 223, child’s insurance benefits
15 under section 202(d) based on the individual’s dis-
16 ability, or widow’s or widower’s insurance benefits
17 under subsection (e) or (f) of section 202 based on
18 the individual’s disability, and

19 “(B) whose disability is based (in whole or in
20 part) on a waxing and waning medical condition.

21 “(3) For purposes of paragraph (1), the special enti-
22 tlement period of an individual under this subsection—

23 “(A) begins with the month in which the indi-
24 vidual becomes entitled to benefits described in para-
25 graph (2)(A), and

1 “(B) ends with any month during which the
2 Commissioner determines that the impairment on
3 the basis of which such benefits are provided has
4 ceased, does not exist, or is not disabling.

5 “(4) The amount of a qualifying disabled individual’s
6 benefit described in paragraph (2) which is payable for
7 any month under this title commencing with or after such
8 individual’s 7th month of entitlement shall not exceed the
9 amount of such benefit otherwise payable under this title,
10 reduced (to not less than zero), by $\frac{2}{3}$ of the individual’s
11 excess trial earnings amount for such month.

12 “(5) For purposes of this paragraph—

13 “(A) The term ‘waxing and waning medical
14 condition’ means, in connection with an individual,
15 any medical condition which, prior to the first month
16 of entitlement of the individual, has been certified to
17 the Commissioner by a qualified physician as a con-
18 dition which, in the case of such individual, may rea-
19 sonably be expected to involve, in the absence of re-
20 covery, periods for which the individual will be able
21 to engage in substantial gainful activity interspersed
22 among periods for which the individual will not, by
23 reason of a lack of adequate and reasonably avail-
24 able assistive technology, be able to engage in sub-
25 stantial gainful activity.

1 “(B) The term ‘excess trial earnings’ of an indi-
2 vidual for any month means the excess (if any) of—

3 “(i) the average amount earned by such in-
4 dividual from services performed each month
5 during the most recent test period commencing
6 with or after the first month of the such indi-
7 vidual’s special entitlement period, over

8 “(ii) the trial earnings threshold for such
9 month.

10 “(C) The term ‘test period’ in connection with
11 any month means the period of the first 3 calendar
12 months of the period of 6 calendar months imme-
13 diately preceding such month.

14 “(D) The term ‘trial earnings threshold’ for a
15 month means the greater of \$670 or the product de-
16 rived for the month for purposes of this subpara-
17 graph under paragraph (6).

18 “(6) The product derived under this paragraph for
19 any month for purposes of subparagraph (D) of paragraph
20 (1) or subparagraph (D) of paragraph (5) is the product
21 derived by multiplying the dollar amount specified in such
22 subparagraph by the ratio of—

23 “(A) the national average wage index (as de-
24 fined in section 209(k)(1)) for the first of the 2 pre-
25 ceding calendar years, to

1 “(B) the national average wage index (as so de-
2 fined) for calendar year 2006.

3 Any such product which is not a multiple of \$10 shall be
4 rounded to the next higher multiple of \$10 where such
5 product is a multiple of \$5 but not of \$10 and to the near-
6 est multiple of \$10 in any other case. The Secretary shall
7 determine and publish the trial earnings threshold for
8 each month in November of the preceding calendar year.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) TERMINATION MONTH.—

11 (A) Section 223(a)(1) of such Act (42
12 U.S.C. 423(a)(1)) is amended by inserting,
13 after the first full sentence beginning in the
14 matter following subparagraph (E), the fol-
15 lowing new sentence: “The termination month
16 of a qualifying disabled individual (as defined in
17 section 222(f)(2)) shall be determined under
18 section 222(f)(1)(A).”.

19 (B) Section 202(d)(1)(G)(i) of such Act
20 (42 U.S.C. 402(d)(1)(G)(i)) is amended by
21 striking “activity)” and inserting “activity, and,
22 in the case of a qualifying disabled individual
23 (as defined in section 222(f)(2)), the termi-
24 nation month shall be the month determined
25 under section 222(f)(1)(A))”.

1 (C) Section 202(e)(1) of such Act (42
2 U.S.C. 402(e)(1)) is amended by inserting,
3 after the first full sentence beginning in the
4 matter following subparagraph (F)(ii), the fol-
5 lowing new sentence: “The termination month
6 of a qualifying disabled individual (as defined in
7 section 222(f)(2)) shall be determined under
8 section 222(f)(1)(A).”.

9 (D) Section 202(f)(1) of such Act (42
10 U.S.C. 402(f)(1)) is amended by inserting, after
11 the first full sentence beginning in the matter
12 following subparagraph (F)(ii), the following
13 new sentence: “The termination month of a
14 qualifying disabled individual (as defined in sec-
15 tion 222(f)(2)) shall be determined under sec-
16 tion 222(f)(1)(A).”.

17 (2) CONFORMING AMENDMENT TO CURRENT
18 RULES REGARDING SUBSTANTIAL GAINFUL ACTIVITY
19 BY OTHER INDIVIDUALS DURING EXTENDED PERI-
20 ODS OF ELIGIBILITY.—Section 223(e)(1) of such Act
21 (42 U.S.C. 423(e)(1)) is amended by striking “No
22 benefit” and inserting “In the case of an individual
23 other than a qualifying disabled individual (as de-
24 fined in section 222(f)(2)), no benefit”, and by strik-

14 SEC. 3. AMENDMENT TO TITLE XVI OF THE SOCIAL SECU-
15 RITY ACT.

19 “Special Rules for Disability Benefit Based on Waxing
20 and Waning Medical Condition

23 “(A) the extent to which a benefit under this
24 title by reason of disability is payable with respect
25 to the individual during the special entitlement pe-

1 riod of the individual shall be determined without re-
2 gard to whether the individual is able to engage in
3 substantial gainful activity;

4 “(B) the amount of the benefit payable for any
5 month during the special entitlement period shall
6 not exceed the maximum benefit payable with re-
7 spect to the individual for the month, as determined
8 under paragraph (4); and

9 “(C) the Commissioner shall not undertake a
10 review of the individual’s disability during any
11 month following a month in which such individual
12 performs services from which the individual earns
13 the greater of \$350 or the dollar amount derived for
14 the month for purposes of section 222(f)(1)(D)
15 under section 222(f)(6).

16 “(2) For purposes of paragraph (1), the term ‘quali-
17 fying disabled individual’ means an individual who is an
18 eligible individual for purposes of this title by reason of
19 disability, and whose disability is based (in whole or in
20 part) on a waxing and waning medical condition.

21 “(3) For purposes of paragraph (1), the special enti-
22 tlement period of an individual—

23 “(A) begins with the month in which the indi-
24 vidual becomes entitled to benefits under this title by
25 reason of disability; and

1 “(B) ends with any month during which the
2 Commissioner determines that the impairment on
3 the basis of which such benefits are provided has
4 ceased, does not exist, or is not disabling.

5 “(4) The amount of the benefit of a qualifying dis-
6 abled individual which is payable for any month under this
7 title commencing with or after the 7th month for which
8 the individual is eligible for benefits under this title by
9 reason of such disability shall not exceed the amount of
10 the benefit otherwise payable under this title, reduced (to
11 not less than zero) by $\frac{2}{3}$ of the individual’s excess trial
12 earnings amount for the month.

13 “(5) For purposes of this subsection:

14 “(A) The term ‘waxing and waning medical
15 condition’ means, in connection with an individual,
16 any medical condition which, prior to the first month
17 of eligibility of the individual for benefits under this
18 title by reason of disability, has been certified to the
19 Commissioner by a qualified physician as a condition
20 which, in the case of such individual, may reasonably
21 be expected to involve, in the absence of recovery,
22 periods for which the individual will be able to en-
23 gage in substantial gainful activity interspersed
24 among periods for which the individual will not, by
25 reason of a lack of adequate and reasonably avail-

1 able assistive technology, be able to engage in sub-
2 stantial gainful activity.

3 “(B) The term ‘excess trial earnings’ of an indi-
4 vidual for any month has the meaning given the
5 term in section 222(f)(5)(B).

6 “(C) The term ‘test period’ in connection with
7 any month has the meaning given the term in sec-
8 tion 222(f)(5)(C).

9 “(D) The term ‘trial earnings threshold’ for a
10 month has the meaning given the term in section
11 222(f)(5)(D).”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to benefits payable for months
14 beginning after the date of the enactment of this Act.

○